ARKANSAS SUPREME COURT

No. CR 86-58

NOT DESIGNATED FOR PUBLICATION

EDDIE LEE JONES
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered April 6, 2006

PRO SE PETITION TO REINVEST JURISDICTION IN CIRCUIT COURT TO CONSIDER A PETITION FOR WRIT OF ERROR *CORAM NOBIS* [CIRCUIT COURT OF CRAIGHEAD COUNTY, WESTERN DISTRICT, CR 85-110]

PETITION DENIED

PER CURIAM

Eddie Lee Jones was found guilty by a jury in 1985 of rape, kidnapping, and theft of property. He was sentenced to consecutive terms of life, life, and ten years' imprisonment. We affirmed. *Jones v. State,* 290 Ark. 113, 717 S.W.2d 200 (1986). Jones subsequently timely filed in this court a *pro se* petition for leave to proceed in circuit court with a petition for post-conviction relief pursuant to Criminal Procedure Rule 37.1.[1] The petition was denied. *Jones v. State,* CR 86-58 (Ark. June 29, 1987) (*per curiam*).

Jones now asks that this court reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis.*[2] The petition for leave to proceed in the trial court with a petition for writ of error *coram nobis* is necessary because the circuit court can entertain a petition for writ of error *coram nobis* after a judgment has been affirmed on appeal only after we grant permission *Dansby*

[1]Prior to July 1, 1989, a petitioner whose judgment of conviction had been affirmed on appeal was required to petition this court for relief under Criminal Procedure Rule 37.1 and gain leave from this court to proceed under the rule in the circuit court before filing a petition there. The rule was revised effective January 1, 1991, to allow all petitioners to file for postconviction relief directly in the trial court without having first garnered permission from this court.

[2]For clerical purposes, the instant petition to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis* was assigned the same docket number as the direct appeal of the judgment.

v. State, 343 Ark. 635, 37 S.W.3d 599 (2001) (*per curiam*).

Petitioner's sole ground for reinvesting jurisdiction in the trial court is that because the decision of the United States Supreme Court in *Batson v. Kentucky*, 476 U. S. 79 (1986), had not yet been handed down, trial counsel could not have raised a *Batson* challenge to the jury selection. The issue of the racial makeup of the jury was, however, raised in petitioner's postconviction relief proceeding.

A writ of error *coram nobis* is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). We have held that a writ of error *coram nobis* was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (*per curiam*). For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). The function of the writ is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, ___ S.W.3d ___ (2004). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts*, 336 Ark. at 582, 986 S.W.2d at 409.

The State argues in its response that petitioner's claim does not fall within any of the four recognized categories of claims that may be pursued in an error *coram nobis* proceeding. Citing *Coulter v. State*, ___ Ark. ___, ___ S.W.3d ___ (February 9, 2006), the State asserts that because petitioner's claim fails to fall within one of those four categories, his claim is not within the purview of a *coram nobis* proceeding. While petitioner has not attempted to argue that his case fits within one of those four categories, he does argue that the holding in *Batson* was something unknown that would have changed the outcome of his trial. This court has held that the remedy is only available

where there is an error of fact extrinsic to the record, such as those in the four recognized categories, that might have resulted in a different verdict. *Clark v. State*, ___ Ark. ___, ___ S.W.3d ___ (September 23, 2004).

The relevant facts, those relating to the jury selection, were not extrinsic to the record, but the applicable law, as set out in *Batson*, was unknown at the time of the trial. The opinion in *Batson* was issued while petitioner's direct appeal was pending. Under *Griffith v. Kentucky*, 479 U.S. 314 (1987), *Batson* applied to decisions pending in state courts on direct review, or those not yet final because *certiorari* was sought or because the time for *certiorari* had not yet elapsed, following affirmation on direct review. While the question in this case was not raised on direct appeal, petitioner's request for postconviction relief did challenge the jury selection process, and our opinion denying leave to proceed in circuit court addressed the issue. There we found that there was no indication that the prosecution had used its strikes to exclude any person on account of race. Petitioner does not advance or develop any argument as to how or why a case involving applicable law that was unknown at the time of trial should fall within the scope of error that the writ was intended to address. Whether petitioner's claim is one that might otherwise be cognizable in an error *coram nobis* proceeding or not, the claim is not cognizable because the issue was previously decided.

C*oram nobis* proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984), citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975). A claim is not cognizable in a petition for writ of error *coram nobis* if it may be properly raised in a timely petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1 or on direct appeal. *See McArty v. State*, 335 Ark.445, 983 S.W.2d 418 (1998) (*per curiam*). Here, petitioner's claim not only may have been raised in a postconviction relief proceeding, it was indeed raised.

The issue is now settled as law of the case. The law-of-the-case doctrine dictates that a decision made in a prior appeal may not be revisited in a subsequent appeal. *Green v. State*, 343 Ark. 244, 33 S.W.3d 485 (2000). Because the issue is settled, petitioner has not stated a claim that

is cognizable in a *coram nobis* proceeding, and he has therefore failed to show grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error *coram nobis*.

Petition denied.